

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHAEL HICKMAN, et al.,

Plaintiffs,

v.

JARREL BURCHETT, et al.,

Defendants.

Case No. 2:07-cv-743

JUDGE GREGORY L. FROST

Magistrate Judge Terence P. Kemp

OPINION AND ORDER

This matter is before the Court for consideration of Plaintiff's January 8, 2008 Motion for Default under Fed. R. Civ. P. 55. (Doc. # 6.) Putting aside for the moment the merits of whether Defendants failed to plead or otherwise respond in a timely manner, the Court recognizes that Plaintiff's request is procedurally flawed.

The docket fails to indicate that, prior to seeking a default judgment, Plaintiff first obtained from the clerk an entry of default as contemplated by Rule 55(a). An entry of default is distinct from entry of a default judgment. *O.J. Distrib., Inc. v. Hornell Brewing Co., Inc.*, 340 F.3d 345, 353 (6th Cir. 2003); *see also* 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2692 (3rd ed. 2003); S.D. Ohio Civ. R. 55.1(b). By asking for a default judgment, Plaintiff has failed to follow the sequential procedure set forth in the Rule. *See Brantley v. Runyon*, No. C-1-96-842, 1997 WL 373739, at *1 (S.D. Ohio June 19, 1997) ("In order to obtain a default judgment under Rule 55(b)(2), there must first be an entry of default as provided by Rule 55(a)."). *See also Webster Indus., Inc. v. Northwood Doors, Inc.*, 244 F. Supp. 2d 998, 1003 (N.D. Iowa 2003) (" 'entry of default under Rule 55(a) must precede grant of a default judgment under Rule 55(b)' " (quoting *Hayek v. Big Brothers/Big Sisters of*

America, 198 F.R.D. 518, 520 (N.D. Iowa 2001))) ; *Lee v. Brotherhood of Maint. of Way Employees–Burlington N. Sys. Fed’n*, 139 F.R.D. 376, 380 (D. Minn. 1991) (“an entry of default is a prerequisite to a default judgment under Rule 55(b)”). The Court therefore cannot enter a default judgment under Rule 55(b). *Cf. O.J. Distrib., Inc.*, 340 F.3d . at 352 (“ ‘Rule 55 permits the clerk to enter a default when a party fails to defend an action as required. The court may *then* enter default judgment.’ ” (Emphasis added)) (quoting *Weiss v. St. Paul Fire & Marine Ins. Co.*, 283 F.3d 790, 794 (6th Cir. 2002)).

For the foregoing reasons, the Court **DENIES** Plaintiff’s Motion for Default Judgment.
(Doc. # 6.)

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE